upa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.359 OF 2002

Namdeo Sitaram Bhoir)
Aged about 34 years)
R/at Maneragaon, Tal.: Ulhasnagar)
District : Thane)
(At present in Adharwadi Jail).. APPELLANT

VERSUS

The State of Maharashtra)
(Through Vithalwadi Police Station,)
Ulhasnagar) .. RESPONDENT

Mr.P.M. Pradhan for the Appellant.

Mr.P.S. Hingorani, Additional Public Prosecutor, for the Respondent.

CORAM: V.G. PALSHIKAR AND SMT. NISHITA MHATRE, JJ.

DATED: 6TH OCTOBER 2006

ORAL JUDGMENT : (PER PALSHIKAR, J.)

. Being aggrieved by the order dated 8th March 2002 passed by the IInd Additional Sessions Judge, Kalyan in Sessions Case No.221 of 1998 convicting and sentencing the accused-Appellant under Section 302 of the Indian Penal Code to suffer imprisonment for life and a fine of Rs.400/-, the Appellant-accused has preferred this Appeal on the grounds mentioned in the Memo of Appeal as also verbally canvassed before us by the learned Counsel appearing on behalf of the accused.

2. With the assistance of the learned Counsel appearing for the defence and the learned Additional

Public Prosecutor, we have scrutinised the oral and documentary evidence on record. The prosecution has examined in this case ten witnesses to prove that accused was the person responsible for homicidal death of the victim and circumstances in which it was caused rendered that homicidal death to be murder as defined under Section 302 of the Indian Penal Code.

3. The prosecution story, stated briefly, is :

. The accused was married to the victim Pushpa and the married lief existed for three years. Inspite of being married to Pushpa, the accused had illicit relationship with one Soni and on that ground there was quarrel between the husband and the wife. On several occasions the wife was tortured by the husband and on one occasion the wife filed a complaint in Vithalwadi Police Station representing the ill-treatment meted out to her. On 26th July 1998, when the husband and wife were alone in the house, the husband told the wife that he is going to Tirupati and, therefore, the wife requested him to take her along which was refused by him which resulted in quarrel between the two and the accused pour kerosene on the body of the victim and put her afire, waited till she burnt completely and then with the help of his sister took her to the hospital where she was admitted by PW5. At the time when she was admitted, according to PW5, she was severely burnt and unable to enter into verbal communication. It is proved

on record by the prosecution that thereafter the victim was removed from that hospital and taken to Shivaji Hospital where she was admitted and treated. The fact that the victim received such burn injuries was informed by PW6, Sawlaram, on the basis of which investigation started and the accused was arrested. The prosecution examined ten witnesses and the learned trial Judge on appreciation of the entire evidence came to the conclusion of guilt as aforesaid. It is this order of conviction and sentence which is assailed in this Appeal.

4. According to the learned Counsel appearing on behalf of the accused, the conviction is not sustainable in law because the dying declaration is liable to be rejected. The reason given by the learned Counsel for seeking such rejection of the dying declaration is the evidence of PW5, Dr.Sunita, who admitted the victim in her hospital immediately after the burn incident. She has deposed that when she admitted the victim, the victim was severely burnt and was unable to communicate verbally. According to the witness, she was in a kind of shock and therefore was not able to speak. Mr.Pradhan relies very heavily on the testimony of this witness for claiming rejection of the dying declaration.

5. The evidence of PW5, Dr.Sunita, is required to be noticed to meet these arguments. According to her, the victim was admitted to Central Hospital, Ulhasnagar

on 26th July 1998 around 3.40 p.m. and at that time she found that Pushpa was conscious but not able to respond verbally. Then in cross-examination she admits that in spite of being a qualified Doctor, she does not know on what principle Rule of 9 is based. Her ignorance of medical science is further demonstrated by her statement in paragraph 3 that normally in cases of burn injuries to females, it is a case of suicide. Such conclusion, apart from being baseless is unwarranted and speaks of immature and inexperienced nature of the person making the statement. In our opinion, such witness cannot be believed and certainly cannot be relied upon for disbelieving a dying declaration which has been duly proved by the person who recorded it and by the Doctor who was present when the declaration was being recorded. He has stated before the Court on oath that when the dying declaration was being recorded and after it was recorded, he was present there, he examined the patient before declaration was recorded and on both occasions she was conscious and in a condition to give a statement. In the face of this evidence of PW2 and PW8, Dr.Ajay, it is clear that the dying declaration was recorded as required by the Criminal Manual by a Executive Magistrate in presence of a Doctor who has deposed to the condition of the victim while the statement was being recorded. We are, therefore, unable to accept the submission that the dying declaration deserves to be rejected.

6. It was then contended that the accused was charged not only with murder but was also charged for wrongful confinement under Section 342 of the Indian Penal Code. The learned Judge has on appreciation of this clear evidence acquitted the accused of that charge. The submission, therefore, is that since charge under Section 342 is not proved, no other offence is likely to be committed because confinement was necessary for causing death by burns. We are unable to accept this contention for the reason that confinement is not proved because there is no evidence in relation to that and except for the statement of the victim, there is nothing else to suggest that she was confined and, therefore, it resulted in acquittal of the accused. In so far as conviction under Section 302 of the Indian Penal Code is concerned, there is ample evidence, oral and documentary, on record to sustain the finding of guilt.

7. PW1, Budhaji, is the father of the victim. He speaks of ill-treatment meted out to the victim by the accused due to illicit relations with another woman. He speaks of visiting the hospital where the daughter was being treated and he was told by the daughter that the accused put her on fire which resulted in her condition at the hospital. This very effect is of PW3, the mother of the victim and PW4, Alka, the sister of the victim. Each statement made by the victim in the dying declaration is duly corroborated by these three

witnesses. PW4 Alka speaks of illicit relationship and lodging of complaint in Vithalwadi Police Station and heard the victim saying that the victim was burnt by her husband. The statement made in this regard in the dying declaration thus stands duly corroborated by testimony of three witnesses. The contention is that these three witnesses need not be believed for corroboration as they are very close relations of the victim and are bound to support the claim made by the victim. The offence itself is of such a nature that only near and dear ones will be around the victim of such gruesome act. Cross-examination of these witnesses does not disclose any lacuna for existence of which their entire testimony is liable to be rejected. Apart from these three witnesses, who are relatives, we have the evidence of PW2, Dattaram, who is the Special Executive Magistrate who heard the declaration and reduced it to writing and he has deposed that while the declaration was being recorded the victim said that she was burnt by her husband and described the manner in which the burn injuries were caused. At no stage of imagination, PW2, Dattaram, who is the Magistrate and PW8, Dr.Ajay, who was present when the declaration was recorded, can be called in any manner interested or partial. The testimony of PW2 and PW8 thus independently corroborate the claim made in the dying declaration of the victim that she was put to death by her husband.

8. There is another piece of intrinsic evidence

which lends to additional credence to the dying declaration made by the victim and that evidence is of PW7, Dr.Ramesh, who admitted Pushpa to Shivaji Hospital. While admitting the patient, the history was noted by this Doctor which entry is also proved by him later on and it is clearly mentioned therein the alleged history of burns of husband is there. This, therefore, is yet another circumstantial evidence which cannot be doubted which corroborates the claim of the wife that she was put to death by her husband.

9. In our opinion, there is clear unequivocal and firm evidence on record to support the order of conviction as recorded by the learned trial Judge and we have independently assessed the evidence and our conclusions are reflected above. The learned trial Judge may have reached the conclusion of guilt for other reasons but we are not concerned with the reasoning as long as, we, on our reappreciation, are sure that the conclusion of guilt was correct. In our opinion, the judgment of conviction and sentence is proper. It is based on sound evidence and correct conclusions. We are also of the same opinion and hence there is no substance in this Appeal. In the result, the same fails and is dismissed.

(V.G.PALSHIKAR, J.)

(SMT.NISHITA MHATRE, J.)